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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

**BINYAM MOHAMED;
ABOU ELKASSIM BRITEL;
AHMED AGIZA;
MOHAMED FARAG AHMAD
BASHMILAH;
BISHER AL-RAWI,**

Plaintiffs,

v.

JEPPESEN DATAPLAN, INC.,

Defendant.

Civil Action No. 5:07-cv-02798 (JW)

**DECLARATION OF STEVEN
MACPHERSON WATT IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO THE
UNITED STATES' MOTION TO DISMISS
OR, IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT**

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**DECLARATION OF STEVEN MACPHERSON WATT IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS, OR IN THE
ALTERNATIVE, FOR SUMMARY JUDGMENT**

1 I, **STEVEN MACPHERSON WATT**, under penalty of perjury, declare as follows,
2 pursuant to 28 U.S.C. § 1746:

- 3 1. I am a senior staff attorney with the American Civil Liberties Union and co-counsel in
4 this action. I submit this declaration in support of Plaintiffs' Opposition to the United
5 States' Motion to Dismiss or, in the Alternative, for Summary Judgment.
- 6 2. Specifically, I submit this declaration to demonstrate the significant number of
7 documents in the public domain regarding the Central Intelligence Agency's rendition
8 program, and the renditions of Mr. Mohamed, Mr. Britel, Mr. Agiza, Mr. Bashmilah
9 and Mr. Al-Rawi in particular. These documents comprise, *inter alia*, public
10 statements by U.S. government officials describing in detail the parameters of the
11 rendition program, official unclassified U.S. government documents detailing the
12 program, and documentation from international inter-governmental and national
13 parliamentary inquiries and criminal and journalistic investigations into European
14 states' involvement in the U.S. rendition program. In addition, hundreds of articles in
15 major newspapers have described the rendition cases of plaintiffs and others, as have
16 numerous U.S. and international television documentary programs. The
17 documentation referenced in this declaration represents just a fraction of an extensive
18 and growing number of documents describing the U.S. rendition program that are
19 currently publicly available.
- 20 3. Since September 11, 2001, senior officials within the U.S. government, including the
21 President, current Secretary of State Condoleezza Rice, former Secretary of State
22 Colin Powell, current CIA Director Michael Hayden, former CIA Directors Porter
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1 Goss and George Tenet, and senior intelligence and administration officials have
2 spoken publicly about the rendition program.

- 3 4. As these government officials and others have explained, the rendition program was
4 established well before the September 11 attacks. However, since September 11, the
5 program's primary objective has changed from the transfer of suspects to stand trial in
6 other nations to the clandestine apprehension, transfer, detention, and interrogation of
7 foreign nationals suspected of involvement in terrorism outside the United States.
- 8 5. On September 6, 2006, President Bush publicly acknowledged the existence of the
9 current rendition program and defended its utility. Confirming earlier media reports,
10 the President announced that: "Working with our allies, we've captured and detained
11 thousands of terrorists and enemy fighters in Afghanistan, in Iraq, and other fronts of
12 this war on terror." He acknowledged that some of those captured had been
13 "transferred to an environment where they can be held secretly, questioned by
14 experts." The President confirmed that "a small number of suspected terrorist leaders
15 and operatives captured during the war have been held and questioned outside the
16 United States, in a separate program operated by the Central Intelligence Agency."
17 He singled out several of them by name -- Abu Zubaydah, Khalid Sheikh
18 Mohammed, and Ramzi bin al Shibh -- and noted that the information these three men
19 and others provided during their interrogation "has given [the U.S. government]
20 information that has saved innocent lives by helping . . . stop new attacks -- here in
21 the United States and across the world." The President revealed that during
22 interrogations an "alternative set" of procedures had been employed and that "[a]ll
23 those involved in the questioning of the terrorists [we]re carefully chosen and . . .
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1 screened from a pool of experienced CIA officers. Those selected to conduct the
2 most sensitive questioning had to complete more than 250 additional hours of
3 specialized training before they are allowed to have contact with a captured terrorist.”
4 The President stated that the program “has detained only a limited number of
5 terrorists at any given time – and once we’ve determined that the terrorists held by the
6 CIA have little or no additional intelligence value, many of them have been returned
7 to their home countries for prosecution and detention by their governments.” Finally,
8 the President announced that the CIA rendition program “has been, and remains, one
9 of the most vital tools in our war against the terrorists” and that at all times it operated
10 within a legal framework:
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12 This program has been subject to multiple legal reviews by the Department of
13 Justice and CIA lawyers; they’ve determined it complied with our laws. This
14 program has received strict oversight by the CIA’s Inspector General. A small
15 number of key leaders from both political parties on Capitol Hill were briefed
16 about this program.

17 Specifically, as regards the “alternative” interrogation techniques employed, the
18 President confirmed: “These procedures were designed to be safe, to comply with our
19 laws, our Constitution, and our treaty obligations.” Attached hereto as Exhibit A is
20 a true and correct copy of President George W. Bush, *President Discusses Creation of*
21 *Military Commissions to Try Suspected Terrorists*, (Sept. 6, 2006) transcript
22 available at [http://www.whitehouse.gov/news/releases/2006/09/print/20060906-](http://www.whitehouse.gov/news/releases/2006/09/print/20060906-3.html)
23 [3.html](http://www.whitehouse.gov/news/releases/2006/09/print/20060906-3.html).

- 24 6. Before this statement, President Bush had publicly referenced the rendition program
25 on numerous other occasions. During a March 16, 2005 press conference, the
26 President was asked why he “approved of and expanded the practice of what’s called
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1 rendition, of transferring individuals out of U.S. custody to countries where human
2 rights groups and . . . the State Department say torture is common for people under
3 custody.” The president answered that in the “post-9/11 world, the United States
4 must make sure we protect our people and our friends from attack And one way
5 to do so is to arrest people and send them back to their country of origin with the
6 promise that they won’t be tortured.” Attached hereto as Exhibit B is a true and
7 correct copy of the *President's Press Conference* (Mar. 16, 2005) transcript *available*
8 *at* <http://www.whitehouse.gov/news/releases/2005/03/20050316-3.html>.
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10 7. One month later, the President was again asked to comment on his justification for
11 “the practice of renditioning, where U.S. agents who brought terror suspects abroad,
12 taking them to a third country for interrogation?” The President replied: “We operate
13 within the law and we send people to countries where they say they’re not going to
14 torture the people [W]e expect the countries where we send somebody to, not to
15 torture, as well. But you bet, when we find somebody who might do harm to the
16 American people, we will detain them and ask others from their country of origin to
17 detain them [W]e’ve got guidelines. We’ve got law. But you bet . . . we’re
18 going to find people before they harm us.” Attached hereto as Exhibit C is a true and
19 correct copy of the *Press Conference of the President* (Apr. 28, 2005) transcript
20 *available at* <http://www.whitehouse.gov/news/releases/2005/04/20050428-9.html>.
21

22 8. Both the current Secretary of State, Condoleezza Rice, and her predecessor, Colin
23 Powell, have publicly commented on the rendition program. In December 2005, on
24 her departure for official state visits to several European countries, including
25 Germany, Secretary of State Rice defended the post 9/11 form of the rendition
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1 program as “a vital tool in combating transnational terrorism.” She explained that the
2 United States “must track down terrorists who seek refuge in areas where
3 governments cannot take effective action, including where the terrorists cannot in
4 practice be reached by the ordinary processes of law.” She continued: “For decades,
5 the United States and other countries have used ‘renditions’ to transport terrorist
6 suspects from the country where they were captured to their home country or to other
7 countries where they can be questioned, held, or brought to justice.” The United
8 States, she said, did not “have the luxury of only using law enforcement techniques,”
9 but required other options when it was unable to “prosecute someone that is a known
10 terrorist or a suspected terrorist” She added:

12 In some situations, a terrorist suspect can be extradited according to traditional
13 judicial procedures. But there have long been many other cases where, for some
14 reason, the local government cannot detain or prosecute a suspect, and traditional
15 extradition is not a good option. In those cases the local government can make a
sovereign choice to cooperate in a rendition.

16 Secretary Rice denied that individuals were rendered to permit coercive interrogation
17 techniques: “The United States has not transported anyone, and will not transport
18 anyone, to a country when we believe he will be tortured. Where appropriate, the
19 United States seeks assurances that transferred persons will not be tortured.”

20 Secretary Rice explained that persons detained by the United States may “be held for
21 an extended period if the intelligence or other evidence against them has been
22 carefully evaluated and supports a determination that detention is lawful.” She
23 confirmed that foreign governments play a role in the process: “Some governments
24 choose to cooperate with the United States in its intelligence, law enforcement, or
25 military matters,” and in return for their cooperation, the United States shares
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1 intelligence it gathers. Attached hereto as Exhibit D is a true and correct copy of
2 Secretary of State Condoleezza Rice's *Remarks Upon Her Departure for Europe*,
3 Andrews Air Force Base, (Dec. 5, 2005) transcript *available at*
4 <http://www.state.gov/secretary/rm/2005/57602.htm>.
5

- 6 9. In a press briefing the following day, Secretary Rice and German Chancellor Merkel
7 fielded questions on rendition. In relation to the case of Khaled El-Masri, who was
8 allegedly rendered from Macedonia to Afghanistan in 2004, Secretary Rice stated:

9 When and if mistakes are made, we work very hard and as quickly as possible to
10 rectify them. Any policy will sometimes have mistakes and it is our promise to
11 our partners that should that be the case, that we will do everything that we can to
12 rectify those mistakes. I believe that this will be handled in the proper courts here
13 in Germany and if necessary in American courts as well.

14 Attached hereto as Exhibit E is a true and correct copy of the *Joint Press Briefing by*
15 *Condoleezza Rice and Angela Merkel*, (Dec. 6, 2005) transcript *available at*
16 <http://www.state.gov/secretary/rm/2005/57672.htm>.

- 17 10. On the same day, in Washington D.C., White House Press Secretary Scott McClellan,
18 citing Secretary Rice's comments, reiterated that the United States has long engaged
19 in renditions of terror suspects, and denied that those suspects were tortured.

20 Attached hereto as Exhibit F is a true and correct copy of the *Press Briefing by Scott*
21 *McClellan*, (Dec. 6, 2005) transcript *available at*
22 <http://www.whitehouse.gov/news/releases/2005/12/print/20051206-3.html>.

- 23 11. During a public meeting in Australia, Secretary Rice confirmed that "the practice of
24 rendition is something that's been practiced way before September 11th when
25 extradition isn't an option because sometimes you have to take people off the streets."
26

27 Attached hereto as Exhibit G is a true and correct copy of Secretary of State
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1 Condoleezza Rice's *Remarks at Town Hall Meeting with University of Sydney*
2 *Students*, (Mar. 16, 2006) transcript available at
3 <http://www.state.gov/secretary/rm/2006/63166.htm>.
4

5 12. In December 2005, former Secretary of State Colin Powell spoke candidly with the
6 media about the rendition program. He told BBC News that renditions took place
7 with the awareness of European governments over a period of years:

8 Well, most of our European friends cannot be shocked that this kind of thing takes
9 place The fact that we have, over the years, had procedures in place that would
10 deal with people who are responsible for terrorist activities, or suspected of terrorist
11 activities, and so the thing that is called rendition is not something that is new or
12 unknown to my European friends.

13 Attached hereto as Exhibit H is a true and correct copy of *Powell Raps Europe on CIA*
14 *Flights*, BBC NEWS, (Dec. 17, 2005) available at
15 <http://news.bbc.co.uk/2/hi/americas/4538788.stm>.

16 13. During a "press gaggle," White House Press Secretary Tony Snow was asked about a
17 June 2006 Council of Europe Report that contended that many European countries
18 had participated in or aided rendition flights. Snow responded that "[n]ations have to
19 work together on intelligence matters" and that rendition "has been practiced by
20 nations for a very long time." Snow left open the possibility of future renditions,
21 explaining that "rendition is not something that began with this administration, and
22 it's certainly going to be practiced, I'm sure, in the future." Attached hereto as
23 Exhibit I is a true and correct copy of *Press Gaggle by Tony Snow*, (Nov. 16, 2006),
24 transcript available at
25 <http://www.whitehouse.gov/news/releases/2006/06/print/20060607-2.html>.
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1 14. Former Director of National Intelligence John Negroponte admitted that the U.S.
2 government was holding “high-value detainees” in an interview with Time Magazine.
3 The interviewer asked him: “What is the endgame for the three dozen or so high-value
4 detainees?” Mr. Negroponte answered: “I’m not going to get into that one really.
5 You know, these people are being held. And they’re bad actors. And as long as this
6 war on terror continues, I’m not sure I can tell you what the ultimate disposition of
7 those detainees will be.” Attached hereto as Exhibit J is a true and correct copy of
8 Michael Duffy & Timothy J. Burger, *Ten Questions for John Negroponte*, TIME (Apr.
9 16, 2006), at 6, *available at*
10 <http://www.time.com/time/printout/0,8816,1184080,00.html>.
11

12 15. During the 9/11 Commission of Inquiry, senior intelligence officials, gave both
13 written and oral testimony on the rendition program. Christopher Kojm, who from
14 1998 until February 2003 served as Deputy Assistant Secretary for Intelligence Policy
15 and Coordination in the U.S. State Department’s Bureau of Intelligence and Research,
16 described the CIA’s role in liaising with foreign government intelligence agencies to
17 effect renditions, stating that the Agency “plays an active role, sometimes calling
18 upon the support of other [government] agencies for logistical or transportation
19 assistance” but remaining the “main player” in the process. Attached hereto as
20 Exhibit K is a true and correct copy of *Intelligence Policy and National Policy*
21 *Coordination: Hearing of the National Commission on Terrorist Attacks Upon the*
22 *United States*, (Mar. 24, 2004) (statement by Christopher Kojm, Deputy Executive
23 Director, National Commission on Terrorist Attacks Upon the United States, and
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1 former Deputy Assistant Secretary of State), transcript *available at* [http://www.9-](http://www.9-11commission.gov/archive/hearing8/9-11Commission_Hearing_2004-03-24.pdf)
2 [11commission.gov/archive/hearing8/9-11Commission_Hearing_2004-03-24.pdf](http://www.9-11commission.gov/archive/hearing8/9-11Commission_Hearing_2004-03-24.pdf).

3 16. In a written statement submitted to the 9/11 Joint Inquiry Committee, former C.I.A.
4 Director Tenet described the CIA's role in pre-September 11 renditions. He
5 explained that:
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7 During the Millennium threat period . . . [o]ver a period of months, there was close,
8 daily consultation that included Director Freeh, the National Security Adviser, and
9 the Attorney General. We identified 36 additional terrorist agents at the time
10 around the world. We pursued operations against them in 50 countries. Our
11 disruption activities succeeded against 21 of these individuals, and included arrests,
12 renditions, detentions, surveillance, and direct approaches.

13 The CIA, he explained, worked "with numerous European governments, such as the
14 Italians, Germans, French, and British," and "[by] 11 September, the CIA (in many
15 cases with the FBI) had rendered 70 terrorists to justice around the world." Attached
16 hereto as Exhibit L is a true and correct copy of *Written Statement for the Record of*
17 *the Director of Central Intelligence Before the Joint Inquiry Committee*, (Oct. 17,
18 2002) *available at*
19 [https://www.cia.gov/newsinformation/speechestestimony/2002/dci_testimony_10172](https://www.cia.gov/newsinformation/speechestestimony/2002/dci_testimony_10172002.html)
20 [002.html](https://www.cia.gov/newsinformation/speechestestimony/2002/dci_testimony_10172002.html).

21 17. In the written statement he submitted to the 9/11 Commission of Inquiry, Tenet
22 elaborated upon a number of specific instances of CIA involvement in renditions,
23 including assisting "another foreign partner in the rendition of a senior Bin Laden
24 associate" and assisting the Jordanian government in "render[ing] to justice" "terrorist
25 cells that planned to attack religious sites and tourist hotels." Attached hereto as
26 Exhibit M is a true and correct copy of *Written Statement for the Record of the*
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1 *Director of Central Intelligence Before the National Commission on Terrorist Attacks*
2 *Upon the United States*, (Mar. 24, 2004) available at [http://www.9-](http://www.9-11commission.gov/hearings/hearing8/tenet_statement.pdf)
3 [11commission.gov/hearings/hearing8/tenet_statement.pdf](http://www.9-11commission.gov/hearings/hearing8/tenet_statement.pdf).

4
5 18. Based upon the testimony taken and written statements received, the 9/11
6 Commission staff developed initial findings that they later made available to the
7 public. Under the heading “Rendition,” these findings reveal that officials of the CIA,
8 FBI, State Department, and foreign governments cooperated in the rendition of
9 suspected terrorists. Specifically, they conclude that “the CIA helps to catch and send
10 [the suspect] to the United States or a third country,” and that renditions were “an
11 important component of U.S. counterterrorism policy throughout the period leading
12 up to 9/11” and “are still widely used today.” Attached hereto as Exhibit N is a true
13 and correct copy of the relevant section of *Staff Statement No. 7, National*
14 *Commission on Terrorist Attacks Upon the United States*, available at [http://www.9-](http://www.9-11commission.gov/staff_statements/staff_statement_7.pdf)
15 [11commission.gov/staff_statements/staff_statement_7.pdf](http://www.9-11commission.gov/staff_statements/staff_statement_7.pdf).

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17 19. Most recently, Tenet, when asked by CNN’s Wolf Blitzer about allegations made by
18 Khalid El-Masri, who alleged that he had been rendered to Afghanistan and tortured
19 by the CIA, replied that “I don’t believe what he [El-Masri] says is true.” Attached
20 hereto as Exhibit O is a true and correct copy of *The Situation Room’s Interview With*
21 *Former CIA Director George Tenet*, (May 2, 2007) available at
22 <http://transcripts.cnn.com/TRANSCRIPTS/0705/02/sitroom.02.html>.

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24 20. Former CIA Director Porter Goss has also testified about the rendition program in an
25 open session of the Senate Armed Services Committee. In response to Senator
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1 Kennedy's questions about the existence of the rendition program and the transfer of
2 terrorist suspects by the CIA, Goss stated:

3 [O]n the subject of transferring dangerous terrorists and how that all comes about,
4 there are obviously a number of equities involved. We have liaison sources, we
5 have our other government agencies. The idea of moving people around,
6 transferring people for criminal or other reasons, by government agencies is not
7 new. For us in the intelligence business, the idea of helping out dealing with
8 terrorists has been around for about 20 years. And we do have policies and
9 programs on how to do it. We also have liaison partners who make requests of us,
and we try to respect not only the sovereign rights of other countries, but all of the
conventions and our own laws and, of course, the Constitution. And as far as I
know, we do that.

10 A copy of the transcript *Threats to U.S. National Security: Before the Senate*
11 *Armed Services Committee*, 109th Cong., 4 (2005) (Responses to Senators
12 McCain and Kennedy) is available at
13 http://www.humanrightsfirst.org/us_law/etn/docs/fedwires125g.htm.

- 14 21. The current CIA Director, General Michael Hayden, has also openly discussed and
15 defended the rendition program during a public speech and subsequent question-and-
16 answer session at the Council on Foreign Relations in New York on September 7,
17 2007. General Hayden's speech focused on what he described as the CIA's
18 "rendition, detention and interrogation programs" and the Agency's "close
19 collaboration with allied intelligence services." In his remarks, General Hayden
20 emphasized that the program is "very closely controlled and lawfully conducted" and
21 revealed that "[m]ore than 70 percent of the human intelligence reporting used in [the
22 National Intelligence Estimate] is based on information from detainees." He
23 discussed the genesis of the current program, noting that "[i]t began with the capture
24 of Abu Zubaydah in the spring of 2002." General Hayden also gave the audience
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1 statistical data relative to the program, revealing that “[f]ewer than 100 people had
2 been detained at CIA’s facilities, and that” “the number of renditions – that’s moving
3 a terrorist from A to B – apart from that 100 that [the CIA] has detained . . . is . . . mid-
4 range two figures.” General Hayden elaborated on certain operational details about
5 the CIA’s programs and those involved: the “CIA handles a very small number of
6 senior al Qaeda leaders. The average age of interrogators is 43. The amount of
7 training for [interrogators] is 240 hours.” And, in disparaging one of the findings of
8 the European Parliament’s investigation into renditions that “at least 1,245 flights
9 operated by the CIA flew into European airspace and stopped over at European
10 airports between the end of 2001 and the end of 2005,” General Hayden maintained
11 that the “actual number of rendition flights ever flown by CIA is a tiny fraction of
12 that.”
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15 22. General Hayden confirmed that the rendition program involved both the rendition of
16 terror suspects to detention and interrogation by the CIA and renditions to detention
17 and interrogation by other governments. He repeatedly sought to justify both these
18 types of renditions and the interrogation techniques employed by reference to a legal
19 framework. Specifically, in regards to renditions to other governments, Hayden
20 stated:
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22 [W]e do not circumvent any restrictions that we have on ourselves. There is a
23 standard that we have to – have to apply in each and every case. We have to receive
24 assurances and we have to have confidence in the assurances that this individual
25 will be handled in a way that is consistent with international law. And we are
26 required to maintain awareness of how this individual is handled. Now that’s not an
27 invasive right to go to an ally with a clip board and see how they’re running day-to-
28 day activity with a detainee, but as an intelligence agency we have a broad
responsibility that the assurances we receive at the beginning – that we continue to
have confidence that we should have in those assurances We have to believe
that it is less rather than more likely that the individual will be tortured.

1 General Hayden explained that this standard was adopted from the “legislative history
2 for the Senate working to pass the International Covenant Against Torture.” In
3 relation to a question on specific interrogation techniques employed, General Hayden,
4 stated that they too were in compliance with U.S. law, including a Presidential
5 “executive order in the Federal Register,” U.S. obligations under Common Article 3
6 of the Geneva Conventions, and the Convention Against Torture’s “legislative history
7 to the prohibition in domestic law against cruel and inhuman punishment articulated
8 by the 5th, 8th and 14th Amendments to the Constitution.” General Hayden also stated
9 that the techniques used by the CIA were “different from what is contained in the
10 Army Field Manual” and added that the methods contained in the manual “did not
11 exhaust[] the universe of lawful interrogation techniques consistent with the Geneva
12 Convention”
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14 In any event, Hayden explained, the limitations imposed by the Army Field Manual
15 were not applicable to the CIA because the CIA is not part of the Department of
16 Defense. Attached hereto as Exhibit P is a true and correct copy of *A Conversation*
17 *with Michael Hayden*, Council on Foreign Relations, (Sept. 7, 2007), *available at*
18 [http://www.cfr.org/publication/14162/conversation_with_michael_hayden_rush_trans](http://www.cfr.org/publication/14162/conversation_with_michael_hayden_rush_transcript_federal_news_service.html)
19 [cript_federal_news_service.html](http://www.cfr.org/publication/14162/conversation_with_michael_hayden_rush_transcript_federal_news_service.html).
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22 23. In October, General Hayden followed this meeting with a one hour in-depth interview
23 on PBS with Charlie Rose. During this interview, Hayden affirmed many of the
24 statements made relative to the CIA’s “rendition, detention and interrogation
25 programs” during his presentation before the Council on Foreign Relations. General
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1 Hayden confirmed the number of persons who had been rendered by the CIA since
2 September 11 as “mid-range, two figures,” and stated that the CIA had itself detained
3 “fewer than a hundred,” of whom “fewer than a third” were subjected to “enhanced
4 interrogation techniques.” Commenting on CIA interrogation techniques, General
5 Hayden noted that the CIA acts in accordance with prescribed standards that were
6 authorized under U.S. and international laws:
7

8 There are absolute standards. Those standards are embodied in our law. They’re in
9 the Military Commissions Act, for example. They’re in how we ratify the
10 Convention Against Torture. They’re in domestic U.S. law that forbid [sic]
11 different aspects of torture. Some things are just absolutely forbidden. Some things
12 are just wrong. And they’re mentioned very specifically.

13 Attached hereto as Exhibit Q is a true and correct copy of Transcript of Director
14 Hayden’s Interview with Charlie Rose, (Oct. 24, 2007) *available at*
15 [https://www.cia.gov/news-information/press-releases-statements/interview-with-](https://www.cia.gov/news-information/press-releases-statements/interview-with-charlie-rose.html)
16 [charlie-rose.html](https://www.cia.gov/news-information/press-releases-statements/interview-with-charlie-rose.html).

17 24. General Hayden’s most recent exposition of the rendition program was on December
18 6, 2007. In justifying the destruction of CIA videotapes showing the interrogation of
19 certain detainees held by the CIA, General Hayden, in highly specific terms,
20 confirmed the existence of the program and defended its legality. A copy of the
21 transcript of General Hayden’s remarks is available at [https://www.cia.gov/news-](https://www.cia.gov/news-information/press-releases-statements/taping-of-early-detainee-interrogations.html)
22 [information/press-releases-statements/taping-of-early-detainee-interrogations.html](https://www.cia.gov/news-information/press-releases-statements/taping-of-early-detainee-interrogations.html)
23 (“The press has learned that back in 2002, during the initial stage of our terrorist
24 detention program, CIA videotaped interrogations, and destroyed the tapes in 2005. ...
25 Over the course of its life, the Agency’s interrogation program has been of great value
26 to our country. It has helped disrupt terrorist operations and save lives. It was built
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1 on a solid foundation of legal review. It has been conducted with careful
2 supervision.”).

3 25. In an article in the Washington Post on December 1, 2007, a spokesman for the CIA,
4 Paul Gimigliano, in response to questions about the CIA’s liaison with Jordanian
5 intelligence in the rendition program, stated that: “The United States does not transfer
6 individuals to any country if it believes they will be tortured there Setting aside
7 the myths, rendition is, in fact, a lawful, effective tool that has been used over the
8 years on a very limited scale, and is designed to take terrorists off the street.”

9 Attached hereto as Exhibit R is a true and correct copy of Craig Whitlock, *Jordan’s*
10 *Spy Agency: Holding Cell for the CIA*, WASH. POST. Dec. 1, 2007, at A1, available at
11 [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2007/11/30/AR2007113002484_pf.html)
12 [dyn/content/article/2007/11/30/AR2007113002484_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/11/30/AR2007113002484_pf.html).
13

14 26. Michael Scheuer, a former CIA official, has repeatedly described the origins and
15 initial objectives of the rendition program, and how those objectives have
16 dramatically altered since September 11. Most recently, Scheuer, a 22-year veteran of
17 the CIA and Chief of the Bin Laden Unit at the Counterterrorist Center from 1996 to
18 1999, and an architect of the rendition program, has described the program in a
19 Congressional hearing focused on extraordinary rendition:
20

21 The Rendition Program was initiated because President Clinton and Messrs. Lake,
22 Berger and Clarke requested that the CIA begin to attack and dismantle al-Qaeda.
23 These men made it clear from the first that they did not want to bring those captured
24 to the United States or to hold them in U.S. custody After 9/11 and under
25 President Bush, rendered al-Qaeda operatives have been most often kept in U.S.
26 custody.
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1 A copy of the transcript of *Extraordinary Rendition in U.S. Counterterrorism Policy:*
2 *The Impact on Transatlantic Relations:* Before H. Subcomm. on International
3 Organizations, Human Rights, and Oversight and H. Subcomm. on Europe,
4 Comm. on Foreign Affairs, 110th Cong. 18-45 (2007) (Testimony of Michael Scheuer)
5 is *available at* <http://foreignaffairs.house.gov/110/34712.pdf>. During an interview on
6 national television, Mr. Scheuer also said that “[t]he direction [from the politicians]
7 was find, apprehend and hold senior members of Al Qaeda and try to find out
8 what they know about coming attacks against the United States,” adding that, at the
9 time, “the U.S. government is willing to hold these people at various incarceration
10 sites around the world.” A copy of the transcript of *Interview of Michael Scheuer*,
11 PBS Frontline, (Oct. 18, 2005) is *available at*
12 <http://www.pbs.org/wgbh/pages/frontline/torture/interviews/scheuer.html>.
13
14 Finally, Mr. Scheuer wrote in the New York Times that “[r]enditions were called for,
15 authorized and legally vetted not just by the N.S.C. and the Justice Department, but
16 also by the presidents – both Mr. Clinton and George W. Bush,” and “if mistakes
17 were made, like the alleged cases of innocent detainees, they should be corrected . . .
18 .” A copy of Michael Scheuer, *A Fine Rendition*, N.Y. TIMES, (Mar. 11, 2005), at
19 A23 is *available at* <http://www.nytimes.com/2005/03/11/opinion/11scheuer.html>.
20
21 27. Robert Baer, a former covert officer for the CIA who left the agency after 21 years,
22 has confirmed that one goal of the rendition program is to employ harsher
23 interrogation tactics: “If you send a prisoner to Jordan you get a better interrogation.
24 If you send a prisoner, for instance, to Egypt you will probably never see him again,
25 the same way with Syria.” A copy of the transcript of this interview “*File on Four*” –
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1 *Rendition*, BBC, (Feb. 8, 2005) is available at

2 http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/15_02_05_renditions.pdf.

3 28. Tyler Drumheller, a 26-year veteran of the CIA who was head of covert operations in
4 Europe from 2001 to 2005, publicly acknowledged his involvement with the rendition
5 program in an interview with the German magazine *Der Spiegel*: “I once had to brief
6 Condoleezza Rice on a rendition operation, and her chief concern was not whether it
7 was the right thing to do, but what the president would think about it This is no
8 way to run a covert policy.” Drumheller also described the rendition teams as “drawn
9 from paramilitary officers who are brave and colorful. They are the men who went
10 into Baghdad before the bombs and into Afghanistan before the army.” A copy of
11 this interview, *We Probably Gave Powell the Wrong Speech*, (Jan. 29, 2007) is
12 available at <http://www.spiegel.de/international/spiegel/0,1518,462782,00.html>.
13

14 29. Since 2003, Members of Congress have publicly debated the rendition program and
15 proposed concrete legislative measures for its reform or abolition. In response to a
16 letter from Senator Leahy expressing concerns about rendition and its failure to
17 comport with U.S. obligations under the Convention Against Torture, William J.
18 Haynes II, General Counsel of the Department of Defense wrote: “Should an
19 individual be transferred to another country to be held on behalf of the United States,
20 or should we otherwise deem it appropriate, United States policy is to obtain specific
21 assurances from the receiving country that it will not torture the individual being
22 transferred to that country.” A copy of the *Letter from William J. Haynes II to*
23 *Senator Patrick Leahy*, (June 25, 2003) is available at
24 <http://hrw.org/press/2003/06/letter-to-leahy.pdf>.
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- 1 30. Senator Leahy has introduced legislation to address the rendition of any individual by
2 the United States to another country. A copy of *Convention Against Torture*
3 *Implementation Act 2005*, S. 654, 109th Cong., (2005) is available at
4 [http://frwebgate.access.gpo.gov/cgi-](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s654is.txt.pdf)
5 [bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s654is.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s654is.txt.pdf). Representative
6 Markey has introduced similar legislation in the House. A copy of *Torture*
7 *Outsourcing Prevention Act*, H.R. 952, 109th Cong., (2005) is available at
8 <http://www.theorator.com/bills109/hr952.html>. In introducing the bill, Representative
9 Markey stated: “Under the name ‘extraordinary rendition,’ the CIA reportedly sends
10 terrorism suspects, sometimes on the flimsiest of evidence, to foreign countries that
11 are known to employ torture in prisoner interrogation” A copy of Rep. Markey’s
12 comments, Introduction of Legislation Prohibiting Extraordinary Rendition, Cong.
13 Rec. E1225 (Jun. 23, 2004) (statement of Rep. Markey) House of Representatives,
14 (June 23, 2004) is available at www.fas.org/irp/congress/2004_cr/rendition.html.
15 Most recently, on July 25, 2007, Senator Biden introduced legislation to “prohibit
16 extraterritorial detention and rendition.” A copy of this Bill, National Security with
17 Justice Act of 2007, S. 1876, 110th Cong., (2007) is available at
18 [http://frwebgate.access.gpo.gov/cgi-](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1876is.txt.pdf)
19 [bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1876is.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1876is.txt.pdf)
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23 31. In 2007, public hearings were convened by three separate senate committees to hear
24 testimony on the rendition program, including the CIA’s detention and treatment of
25 detainees, the alleged use of European countries to facilitate the transfer and detention
26 of terror suspects, and the rendition of a Canadian citizen, Maher Arar, from the
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1 United States to detention and interrogation under torture in Syria in 2002. (1)
2 *Rendition, Extraterritorial Detention, And Treatment Of Detainees: Restoring Our*
3 *Moral Credibility And Strengthening Our Diplomatic Standing: Before the S. Foreign*
4 *Relations Comm., 110th Cong. (2007); Opening statements by the Chairman, Ranking*
5 *Member, and witnesses are available at*
6 <http://www.senate.gov/~foreign/hearings/2007/hrg070726a.html>; (2) *Rendition to*
7 *Torture: The Case of Maher Arar: H. Comm. on Foreign Affairs, Subcomm. on*
8 *International Organizations, Human Rights, and Oversight, and the H. Comm. on the*
9 *Judiciary, Subcomm. on the Constitution, Civil Rights, and Civil Liberties, 110th*
10 *Cong. (2007); full hearing transcript available from www.cq.com; and (3)*
11 *Extraordinary Rendition in U.S. Counterterrorism Policy: The Impact on*
12 *Transatlantic Relations: Before H. Subcomm. on International Organizations, Human*
13 *Rights, and Oversight and H. Subcomm. on Europe, Comm. on Foreign Affairs, 110th*
14 *Cong. (2007) Op. Cit. at ¶ 26, available at*
15 http://www.fas.org/irp/congress/2007_hr/rendition.pdf.

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18 32. The interest of members of Congress in the rendition program has also prompted a
19 series of reports by the Congressional Research Service -- the first published in 2005
20 and the latest in October, 2007 -- that comprehensively detail the history of the
21 program, its current parameters, and the legal constraints on its use under domestic
22 and international law. A copy of the most recent of these reports, *Renditions and*
23 *Constraints Imposed by Laws on Torture*, (Oct. 12, 2007) is available at
24 <http://www.fas.org/sgp/crs/natsec/RL32890.pdf>.
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1 33. National and international Human Rights organizations in numerous reports have
2 documented the existence of the program and cited in detail to many examples of its
3 use by the United States around the world. *See, e.g.:*

- 4 i. Human Rights Watch, *Empty Promises: Diplomatic Assurances No Safeguard*
5 *Against Torture* (Apr. 2004), available at
6 <http://www.hrw.org/reports/2004/un0404/> (documenting specific rendition
7 cases, including the rendition of Plaintiff Agiza and discussing use and efficacy
8 of “diplomatic assurances” in the process);
9
10 ii. International Federation for Human Rights, *Morocco: Human Rights abuses in*
11 *the fight Against Terrorism* (July 2004), available at
12 <http://www.fidh.org/IMG/pdf/maroc379-2.pdf> (documenting widespread torture
13 and other abuse of persons detained under Moroccan anti-terror laws, and
14 renditions to Morocco, including allegations of Plaintiff Britel);
15
16 iii. Human Rights Watch, *The United States’ “Disappeared”: The CIA’s Long-*
17 *Term “Ghost Detainees”* (Oct. 12, 2004), available at
18 <http://www.hrw.org/backgrounders/usa/us1004/us1004.pdf> (recounting U.S.’s
19 detention of 11 detainees, the history of disappearances in international law and
20 practice, the laws that it violates, and the CIA’s “different rules” for detention
21 and interrogation);
22
23 iv. Amnesty International, USA/Yemen, *Secret Detention in CIA “Black Sites”*
24 (Nov. 8, 2005), available at
25 [http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/\\$File/AMR5117](http://web.amnesty.org/library/pdf/AMR511772005ENGLISH/$File/AMR5117)
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1 705.pdf (documenting U.S. and Yemeni governments' involvement in rendition,
2 including rendition of Plaintiff Bashmilah);

3 v. Center for Human Rights and Global Justice, *Fate and Whereabouts Unknown:*
4 *Detainees in the "War on Terror"* (Dec. 17, 2005), available at
5 <http://www.chrgj.org/docs/Whereabouts%20Unknown%20Final.pdf> (describing
6 various methods of holding detainees who have been subject to rendition);
7

8 vi. Amnesty International, USA, *Below the Radar: Secret Flights to Torture and*
9 *Disappearance* (Apr. 5, 2006), available at
10 <http://web.amnesty.org/library/Index/ENGAMR510512006> (describing use of
11 privately owned aircraft in U.S. rendition program and tying their use to specific
12 rendition flights, including those of plaintiffs);
13

14 vii. Association of the Bar of the City of New York and Center for Human Rights
15 and Global Justice, *Torture By Proxy: International and Domestic Law*
16 *Applicable to "Extraordinary Renditions"* (2004, modified June 2006),
17 available at <http://www.chrgj.org/docs/TortureByProxy.pdf> (documenting U.S.
18 involvement in numerous renditions, including Plaintiffs Mohamed, Agiza, and
19 Bashmilah, and setting forth applicable legal framework); and
20

21 viii. Amnesty International et al., *Off the Record: U.S. Responsibility for Enforced*
22 *Disappearances in the "War on Terror"* (June 2007), available at
23 <http://hrw.org/backgrounders/usa/ct0607/ct0607web.pdf> (presenting information
24 on 39 detainees suspected to have been held at CIA "black site" detention
25 facilities outside the United States and who remain missing).
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1 34. Concern among European nations about complicity in the rendition program through
2 the operation of U.S.-run detention centers in certain European countries and the use
3 of European airspace and airports by the CIA to facilitate the program has resulted in
4 inter-governmental inquiries by the Council of Europe and European Parliament, as
5 well as separate criminal investigations and public inquiries in at least 18 countries,
6 including France, Italy, Spain, Sweden, United Kingdom, Portugal, Germany and
7 Canada.
8

- 9 i. Attached hereto as Exhibit S are true and correct copies of (a) Council Of
10 Europe's Parliamentary Assembly Committee on Legal Affairs and Human
11 Rights (Rapporteur Dick Marty), *Alleged Secret Detentions and Unlawful Inter-*
12 *state Transfers Involving Council of Europe Member States* (June 12, 2006),
13 *available at*
14 <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf> (based
15 on interviews with U.S. and European government officials, official information
16 provided by national and international air traffic control authorities and other
17 documentation, and testimony from witnesses -- including plaintiffs -- and
18 documenting, *inter alia*, the evolution of the rendition program; its operation in
19 Europe since September 11; the specific modus operandi of renditions; and the
20 legal framework within which it purportedly operates; and (b) Council Of
21 Europe's Parliamentary Assembly Committee on Legal Affairs and Human
22 Rights (Rapporteur Dick Marty), *Secret Detentions and Illegal Transfers of*
23 *Detainees Involving Council of Europe Member States: Second Report* (June 11,
24 2007), *available at*
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1 <http://assembly.coe.int/Documents/WorkingDocs/Doc07/edoc11302.pdf>

2 (identifying specific aircraft used by the CIA to effect renditions; based on an
3 analysis of data on their movement through European airspace and “credible and
4 concordant testimonies” concluding that the CIA had operated secret detention
5 centers in Poland and Romania as part of the U.S. “High Values Detainee”
6 program);
7

- 8 ii. Attached hereto as Exhibit T is a true and correct copy of European Parliament,
9 TDIP Temporary Committee (Rapporteur Giovanni Fava), *Report on the alleged*
10 *use of European countries by the CIA for the transportation and illegal*
11 *detention of prisoners* (Jan. 30, 2007), available at
12 http://www.europarl.europa.eu/comparl/tempcom/tdip/final_report_en.pdf
13 (from witness testimonies, interviews with U.S. and European government
14 officials and an analysis of flight records from national and international air
15 traffic control authorities, concluding that the U.S. rendition program has
16 operated in Europe since September 11; identifying specific aircraft used by the
17 CIA to effect renditions, including rendition of plaintiffs); *see also*, *Working*
18 *Document No. 7 on ‘Extraordinary Renditions’* (Nov. 16, 2006), available at
19 [http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380593_](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380593_en.pdf)
20 [en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380593_en.pdf); *Working Document No. 8 on the Companies Linked to the CIA, Aircraft*
21 *Used by the CIA and the European Countries in which CIA Aircraft Have Made*
22 *Stopovers* (Nov. 16, 2006), available at
23 [http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380984_](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380984_en.pdf)
24 [en.pdf](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380984_en.pdf) ; and *Working Document No. 9 on Certain European Countries Analyzed*
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1 *During the Work of the Temporary Committee* (Feb. 26, 2007), available at
2 [http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe382420_](http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe382420_en.pdf)
3 en.pdf;

- 4
5 iii. Attached hereto as Exhibit U is a true and correct copy of All Party
6 Parliamentary Group (UK), *APPG Measures on Rendition* (Sept. 25, 2007)
7 (explaining UK involvement in renditions by the United States, highlighting
8 why current UK arrangements are inadequate to prevent future renditions, and
9 proposing new measures);
- 10 iv. Craig Whitlock, *New Swedish Documents Illuminate CIA Action: Probe Finds*
11 *'Rendition' Of Terror Suspects Illegal*, WASH. POST, May 21, 2005, at A1,
12 available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2005/05/20/AR2005052001605.html)
13 dyn/content/article/2005/05/20/AR2005052001605.html (reporting on ten-
14 month investigation into rendition of Plaintiff Agiza and another Egyptian
15 asylum seeker, Mohamed El-Zery);
- 16
17 v. Giles Tremlett, *Spanish Police Expose More CIA Links To Secret Flights Of*
18 *Detainees*, THE GUARDIAN (UK), Nov. 15, 2005, at 18, available at
19 <http://www.guardian.co.uk/spain/article/0,,1642828,00.html> (reporting that
20 Spanish police have traced up to 42 suspected CIA operatives believed to have
21 taken part in secret flights carrying detained or kidnapped Islamic terror suspects
22 to interrogation centers and jails in Afghanistan, Egypt, and elsewhere);
- 23
24 vi. Craig Whitlock, *Europeans Probe Secret CIA Flights: Questions Surround*
25 *Possible Illegal Transfer of Terrorism Suspects*, WASH. POST, Nov. 17, 2005, at
26 A22, available at <http://www.washingtonpost.com/wp->
27
28

1 dyn/content/article/2005/11/16/AR2005111602198.html (reporting that officials
2 in Spain, Sweden, Norway and European Parliament had opened formal
3 inquiries or demanded answers from U.S. officials about CIA rendition flights
4 within their respective jurisdictions);

5
6 vii. Eric Decouty, *La France Enquete Sur Les Avions de la CIA*, LE FIGARO (France)
7 (Oct. 15, 2007), *available at*
8 [http://www.lefigaro.fr/france/20060302.FIG000000200_la_france_enquete_sur_](http://www.lefigaro.fr/france/20060302.FIG000000200_la_france_enquete_sur_les_avions_de_la_cia.html)
9 [les_avions_de_la_cia.html](http://www.lefigaro.fr/france/20060302.FIG000000200_la_france_enquete_sur_les_avions_de_la_cia.html) (reporting that Attorney General for Bobigny had
10 opened criminal investigation into use of Bobigny airport by CIA for rendition
11 flights);

12
13 viii. *German spy probe to include CIA "kidnap" flights*, REUTERS (Mar. 10, 2006),
14 *available at*
15 [http://www.redorbit.com/news/international/423487/german_spy_probe_to_incl](http://www.redorbit.com/news/international/423487/german_spy_probe_to_include_cia_kidnap_flights/#)
16 [ude_cia_kidnap_flights/#](http://www.redorbit.com/news/international/423487/german_spy_probe_to_include_cia_kidnap_flights/#) (reporting on commencement of German
17 parliamentary inquiry into alleged kidnapping of Khaled El-Masri by CIA);

18
19 ix. Mark Landler, *German Court Challenges C.I.A. Over Abduction*, N.Y. TIMES,
20 Feb. 1, 2007, at A1, *available at*
21 [http://www.nytimes.com/2007/02/01/world/europe/01germany.html?_r=1&oref](http://www.nytimes.com/2007/02/01/world/europe/01germany.html?_r=1&oref=slogin)
22 [=slogin](http://www.nytimes.com/2007/02/01/world/europe/01germany.html?_r=1&oref=slogin) (reporting on issuance of arrest warrants for 13 members of "C.I.A.
23 abduction team" in Munich, Germany, in connection with rendition of Khaled
24 El-Masri);

25
26 x. John Goetz, Marcel Rosenbach, Holger Stark, *C.I.A. Arrest Warrants Strain*
27 *U.S.-German Ties*, SPIEGEL ONLINE (Germany) (June 25, 2007), *available at*
28

1 <http://www.spiegel.de/international/germany/0,1518,490514,00.html> (discussing
2 progress in German investigation and identification of CIA participants in
3 rendition of Khaled El-Masri);

4 xi. *Portugal Joins States Probing CIA Flights*, UPI (Feb. 7, 2007), available at
5 [http://www.upi.com/Security_Terrorism/Analysis/2007/02/07/portugal_joins_st](http://www.upi.com/Security_Terrorism/Analysis/2007/02/07/portugal_joins_states_probing_cia_flights/9324/)
6 [ates_probing_cia_flights/9324//](http://www.upi.com/Security_Terrorism/Analysis/2007/02/07/portugal_joins_states_probing_cia_flights/9324/) (reporting on opening of investigation into CIA
7 rendition flights that allegedly used Portuguese airports);

8 xii. Attached hereto as Exhibit V is a true and correct copy of Craig Whitlock, *Milan*
9 *Court Indicts 26 Americans in Abduction*, WASH. POST, Feb. 17, 2007, at A1
10 (reporting on indictments of 25 CIA operatives, including head of CIA Milan
11 substation, and U.S. Air Force servicemember in Italy, with kidnapping and
12 other crimes in connection with rendition of Abu Omar);

13 xiii. Attached hereto as Exhibit W is a true and correct copy of U.K Intelligence and
14 Security Committee, *Rendition* (July 2007), available at
15 [http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/public](http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_final.pdf)
16 [ations/intelligence/20070725_isc_final.pdf](http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_final.pdf) . (finding that the government of the
17 United Kingdom was aware of, and in some cases assisted through shared
18 intelligence, the rendition of persons who were “UK nationals or lived in the UK
19 or were believed to possess intelligence about terrorist activity in or relating to
20 the UK,” including Plaintiffs Mohamed and Al-Rawi.); and

21 xiv. *Report of the Events Relating to Maher Arar: Factual Background* (Sept. 18,
22 2006), and *Report of the Events Relating to Maher Arar: Analysis and*
23 *Recommendations* (Dec. 6, 2006), available at
24

1 <http://www.ararcommission.ca/eng/26.htm>. (reporting on the findings of a
2 Commission of Inquiry convened in Canada following the rendition of a
3 Canadian citizen, Maher Arar, by U.S. officials to detention and interrogation in
4 Syria. Public hearings commenced in May 2005, and the Commission issued its
5 factual report in September 2006 and its analysis and recommendations in
6 December 2006. The carefully assembled reports, which total over 1,200 pages
7 and were based on a review of the testimony of over 70 persons and 21,500
8 documents, painstakingly detail the events surrounding Mr. Arar's rendition.
9 The Inquiry's report makes clear that the United States government removed
10 Mr. Arar to Syria, where he was tortured and kept in custody for a year.).

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12 35. The United Nations has also examined the U.S. rendition program. In 2006, the U.N.
13 Committee Against Torture (CAT) conducted a review of the U.S. rendition program.
14 As part of the review process, the United States submitted an exhaustive written
15 response to the Committee's written inquiries, and a large delegation from the United
16 States also defended U.S. practices orally over the course of two days of Committee
17 hearings in Geneva. In both the written and oral responses, the United States admitted
18 that renditions have taken place but claimed that they would not take place in
19 situations where detainees would be tortured. A copy of the [Written] Response of
20 the United States of America [to Questions Asked by the Committee Against Torture]
21 (2006) is *available at* <http://www.state.gov/documents/organization/68662.pdf>; *see*
22 *also*, John Bellinger, U.S. Department of State Legal Adviser, U.S. Delegation Oral
23 Response to Questions Asked by the Committee Against Torture (May 5, 2006),
24 *available at* <http://www.state.gov/g/drl/rls/68561.htm>. Legal Adviser Bellinger also
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conducted a “media roundtable” in Brussels, in which he admitted that renditions had taken place in the post-September 11 era, particularly prior to 2004. A copy of the Transcript of Legal Advisor Bellinger’s Media Roundtable in Brussels (May 4, 2006) is *available at*

[http://useu.usmission.gov/Dossiers/Detainee_Issues/May0406_Bellinger_CIA_Flights](http://useu.usmission.gov/Dossiers/Detainee_Issues/May0406_Bellinger_CIA_Flights.asp)
[.asp](http://useu.usmission.gov/Dossiers/Detainee_Issues/May0406_Bellinger_CIA_Flights.asp).

36. Despite the State Department's efforts to defend U.S. practices, the CAT's resulting report was highly critical of the United States. The report expressed specific concern about "the occurrence of cases of extraterritorial torture of detainees," the failure of the United States to always "register persons detained in territories under its jurisdiction outside the United States," the establishment of secret detention facilities, U.S. involvement in enforced disappearances, U.S. refusal to uphold the CAT's requirement of *non-refoulement* outside the boundaries of the United States, and the use of "diplomatic assurances" to justify sending detainees to countries where the United States knows there is nevertheless a high likelihood of torture. A copy of United Nations Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of Convention: Conclusions and Recommendations of the Committee Against Torture* (July 25, 2006) is available at [http://www.unhchr.ch/TBS/doc.nsf/e121f32fbc58faafc1256a2a0027ba24/e2d4f5b2dcc0a4cc12571ee00290ce0/\\$FILE/G0643225.pdf](http://www.unhchr.ch/TBS/doc.nsf/e121f32fbc58faafc1256a2a0027ba24/e2d4f5b2dcc0a4cc12571ee00290ce0/$FILE/G0643225.pdf).

37. The U.N. Committee Against Torture (CAT) and the U.N. Human Rights Committee also separately considered the rendition of Plaintiff Agiza and another Egyptian asylum seeker, Mohammed al-Zery, both of whom were rendered from Sweden to

1 Egypt on December 18, 2001. In the course of its deliberations, the CAT considered
2 evidence of CIA involvement produced by the parties. In *Agiza v. Sweden*, the CAT
3 found Sweden in violation of article 3 (prohibition against rendition to torture) of the
4 U.N. Convention Against Torture. A copy of the decision *Agiza v. Sweden*,
5 CAT/C/34/D/233/2003 (May 24, 2005) is available at
6 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4dec90a558d30573c1257020005225b9?](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4dec90a558d30573c1257020005225b9?Opendocument)
7
8 Opendocument. The U.N. Human Rights Committee (HRC) also found Sweden in
9 violation of the torture ban in connection with the rendition of the other Egyptian
10 asylum seeker, Mohammed El-Zery, despite Sweden's having obtained "diplomatic
11 assurances" from Egypt against torture. In *El-Zery v. Sweden*, the HRC found that
12 such assurances did not provide an effective safeguard against torture or ill-treatment.
13 A copy of the decision, *El-Zery v. Sweden*, CCPR/C/88/D/1416/2005 (Nov. 10, 2006)
14 is available at
15 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/13fac9ce4f35d66dc12572220049e394?O](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13fac9ce4f35d66dc12572220049e394?Opendocument)
16
17 pendocument. Sweden later acknowledged its wrongdoing in both cases and repealed
18 the expulsion orders that had enabled their rendition. Attached hereto as Exhibit X is
19 a true and correct copy of *Sweden Admits Error in Expelling Egyptian*, TORONTO
20 STAR, Mar. 2, 2007, at A9. See also Exhibit C to Declaration of Anna Wigenmark,
21 filed herewith.

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23 38. Both the U.N. Special Rapporteur on Torture and the U.N. Special Rapporteur on the
24 Promotion and Protection of Human Rights while Countering Terrorism have
25 expressed grave concerns in the cases of a number of victims of rendition, including
26 some of the plaintiffs. On August 30, 2005, the U.N. Special Rapporteur on Torture
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1 submitted a report to the U.N. General Assembly that includes an analysis of specific
2 rendition cases -- including some of the plaintiffs -- and U.S. involvement therein.

3 The report concludes that the renditions violated key provisions of the U.N.
4 Convention Against Torture. A copy of the *Report of the U.N. Special Rapporteur on*
5 *Torture to the U.N. General Assembly* (Rapporteur Manfred Nowak) (Aug. 30, 2005)
6 is available at <http://documents.un.org/welcome.asp?language=E>, [click on "Simple
7 Search," enter "A/60/316" under "Symbol," click on "Search," then click on
8 A/60/316, then click on "English."].

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10 39. On May 29, 2007, the U.N. Special Rapporteur on the Promotion and Protection of
11 Human Rights while Countering Terrorism issued a preliminary report on his findings
12 following a ten day visit to the United States. This report references specific rendition
13 cases -- including some of the plaintiffs -- and U.S. involvement therein. He notes
14 "that the refusal of the Acting General Counsel for the CIA to engage in any
15 meaningful interaction, and in the light of corroborating evidence . . . supports the
16 suspicion that the CIA has been involved and continues to be involved in the
17 extraordinary rendition of terrorism suspects and possibly other persons." He further
18 notes that the CIA's use of "civil aircraft" to transport "persons subjected to
19 extraordinary rendition, whether by contract or by the establishment of airlines
20 controlled by the Agency is in violation of the Chicago Convention on Civil
21 Aviation." A copy of the *Preliminary Findings on Visit to United States by Special*
22 *Rapporteur on Promotion and Protection of Human Rights While Countering*
23 *Terrorism* (Rapporteur Martin Scheinin) (May. 29, 2007) is available at
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1 <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/338107B9FD5A33CDC12572EA>
2 005286F8?opendocument.

3 40. Documentary evidence and media reports indicate that U.S. government agencies
4 have also inquired into the lawfulness of the rendition program. In August 2005, a
5 legal memorandum drafted by the FBI analyzing interrogation techniques in place at
6 Guantánamo became publicly available. The memorandum includes a legal analysis
7 of rendition as one of four interrogation techniques employed on detainees at
8 Guantánamo, and notes that one of the techniques contemplates the transfer of
9 detainees from Guantánamo, “either temporarily or permanently, to Jordan, Egypt or
10 another third country to allow those countries to employ interrogation techniques that
11 will enable them to obtain the requisite information.” The memorandum concludes
12 that U.S. officials engaging in rendition could be prosecuted for conspiracy to commit
13 torture under applicable U.S. laws. Attached hereto as Exhibit Y is a true and correct
14 copy of the Federal Bureau of Investigation, *Memorandum on Legal Analysis of*
15 *Interrogation Techniques* (Nov. 27, 2002); *see also* Michael Isikoff, *Exclusive: Secret*
16 *Memo – Send to Be Tortured*, NEWSWEEK (Aug. 8, 2005) at 7, *available at*
17 <http://www.newsweek.com/id/56347> (quoting unnamed senior U.S. law-enforcement
18 official familiar who stated that “the memo reflects concerns among many agents and
19 lawyers about ‘rendition.’”).
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23 41. According to media reports, the Inspector General of the CIA is conducting an
24 investigation of the rendition program and specific instances of mistakes that have
25 been made in relation to its implementation. *See* Dana Priest, *Wrongful*
26 *Imprisonment: Anatomy of a CIA Mistake*, WASH. POST, Dec. 4, 2005, at A1,
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1 available at <http://www.washingtonpost.com/wp->
2 dyn/content/article/2005/12/03/AR2005120301476.html (reporting that the “CIA
3 Inspector General is investigating a growing number of what it calls ‘erroneous
4 renditions’ according to several former and current intelligence officials. One official
5 said about three dozen names fall in that category; others believe it is fewer. The list
6 includes several people whose identities were offered by al Qaeda figures during CIA
7 interrogations.”); *CIA Watchdog Looks into ‘Erroneous Renditions’: Inspector*
8 *general investigates cases of people mistaken as terror suspects*, ASSOCIATED PRESS
9 (Dec. 27, 2005), available at <http://www.msnbc.msn.com/id/10618427/> (citing
10 current intelligence official and reporting that CIA’s inspector general is investigating
11 fewer than 10 cases of potentially “erroneous renditions”); Mark Mazzetti and Scott
12 Shane, *C.I.A. Watchdog Becomes Subject of C.I.A. Inquiry*, N.Y. TIMES, Oct.12, 2007,
13 at A1, available at
14 [http://query.nytimes.com/gst/fullpage.html?res=9E06E3DF143FF931A25753C1A961](http://query.nytimes.com/gst/fullpage.html?res=9E06E3DF143FF931A25753C1A9619C8B63)
15 [9C8B63](http://query.nytimes.com/gst/fullpage.html?res=9E06E3DF143FF931A25753C1A9619C8B63) (reporting that: “A report by Mr. Helgeson’s Office completed in the spring
16 of 2004 warned that some C.I.A. approved interrogation procedures appeared to
17 constitute cruel, inhuman or degrading treatment, as defined by the International
18 Convention Against Torture.”).

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22 42. Egyptian officials have openly acknowledged their role in cooperating with the
23 United States intelligence services in the rendition program, and Human Rights Watch
24 has documented Egypt’s role in the program as far back as 1994. A copy of the
25 transcript of a Meet the Press interview between NBC’s Tim Russert and Egyptian
26 Prime Minister Ahmed Nazif (May 15, 2005) is available at
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1 <http://www.msnbc.msn.com/id/7862265/> (asked how many terrorism suspects had
2 been sent to Egypt by the United States since 9/11, Prime Minister Nazif responded:
3 “I don’t know the exact number, but I know that people have been sent there. The
4 numbers have varied. Some have the number 60 or 70. But I think that it’s important
5 – you know, when you have Egyptians that have been arrested abroad, we seek to
6 bring them back to the country. Now, to say that we’re bringing them back to torture
7 them, I think is not a very accurate statement. We shouldn’t be doing that. We’re not
8 doing that. But it happens sometimes . . .”). The Human Rights Watch report, *Black*
9 *Hole: The Fate of Islamists Rendered to Egypt* (May, 2005) is available at
10 <http://hrw.org/reports/2005/egypt0505/> (based on interviews with exiled activists,
11 Egyptian lawyers, human rights groups, and family members of current detainees, as
12 well as reviews of English and Arabic press accounts, identifying at least 63
13 individuals who have been rendered to, and in a few cases from, Egypt since 1995
14 [see Appendix I]. Human Rights Watch notes that the United States was actively
15 involved in the rendition process.).

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18 43. Media reports on the rendition program generally, and plaintiffs’ rendition
19 specifically, are too numerous to assemble. A Westlaw “ALLNEWS” search
20 confined to “rendition” and plaintiffs’ names in the period from January 2005 to
21 November 15, 2007 revealed 528 news articles in that database alone. Articles about
22 the rendition program have appeared on the front pages of the Washington Post, New
23 York Times, and Los Angeles Times, and have been prominently featured in The
24 New Yorker, Newsweek, and other major publications around the world. The case of
25 just one well-known victim of the rendition program, Khaled El-Masri, has been
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1 featured on CBS' 60 Minutes, PBS Frontline, Dateline NBC, and ABC News. *See,*
2 *e.g.:*

- 3 i. Attached hereto as Exhibit Z is a true and correct copy of Anthony Shadid, *US,*
4 *Egypt Raids Caught Militants*, B. GLOBE, Oct. 7, 2001, at A1 (discussing pre-
5 9/11 rendition program in detail and suggesting that program may be employed
6 by U.S. to fight terrorism going forward);
- 7 ii. Attached hereto as Exhibit AA is a true and correct copy of Alissa Rubin,
8 *Pakistan Hands Over Man in Terror Probe*, L.A. TIMES, Oct. 28, 2001; Masood
9 Anwar, *Mystery Man Handed Over to US Troops in Karachi*, THE NEWS
10 INTERNATIONAL (Pakistan), Oct. 26, 2001, *available at*
11 <http://209.157.64.200/focus/f-news/556778/posts> (reporting on the rendition of
12 Jamil Qasim Saeed Mohammad from Pakistan in 2001 by U.S. forces and the
13 use of a Gulfstream aircraft registered N379P in the process);
- 14 iii. Attached hereto as Exhibit BB is a true and correct copy of Andrew Higgins &
15 Christopher Cooper, *CIA-Backed Team Used Brutal Means to Crack Terror*
16 *Cell: Albanian Agents Sent Egyptians Back to Cairo, Prisoners Allege They*
17 *Were Tortured There*, WALL ST. J., Nov. 21, 2001, at A1. (detailing pre-
18 September 11 rendition of suspected Islamic militant by the C.I.A. from Croatia
19 to detention and interrogation in Egypt);
- 20 iv. Attached hereto as Exhibit CC is a true and correct copy of Anthony Shadid, *In*
21 *Shift, Sweden Extradites Militants to Egypt*, B. GLOBE, Dec. 31, 2001 (reporting
22 on extradition of plaintiff Ahmed Agiza and another Egyptian asylum seeker
23 from Sweden to Egypt);
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- 1 v. By Rajiv Chandrasekaran and Peter Finn, *U.S. Behind Secret Transfer of Terror*
2 *Suspects*, WASH. POST March 11, 2002, at A1, *available at*
3 *http://www.truthout.org/docs_02/03.25C.Secret.Transfer.htm* (reporting on the
4 rendition of Muhammad Saad Iqbal Madni from Indonesia to Egypt on board a
5 Gulfstream V aircraft);
- 6
7 vi. Attached hereto as Exhibit DD is a true and correct copy of Dana Priest &
8 Barton Gellman, *U.S. Decries Abuse But Defends Interrogations: "Stress and*
9 *Duress" Tactics Used on Terrorism Suspects Held in Secret Overseas Prisons*,
10 WASH. POST, Dec. 26, 2002, at A1 (interviewing U.S. officials involved in
11 renditions and quoting one official as saying: "We don't kick the [expletive] out
12 of them. We send them to other countries so *they* can kick the [expletive] out of
13 them.");
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15 vii. Stephen Grey, *America's Gulag*, NEW STATESMAN (May 17, 2004),
16 *available at* <http://www.newstatesman.com/200405170016> (reporting on the
17 CIA's use of private aircraft; a worldwide network of detention facilities and
18 their cooperation with foreign intelligence agencies in the rendition program);
- 19
20 viii. Don Van Natta, Jr. & Souad Mekhennet, *German's Claim of Kidnapping Brings*
21 *Investigation of U.S. Link*, N.Y. TIMES, Jan. 9, 2005, at 11, *available at*
22 <http://www.nytimes.com/2005/01/09/international/europe/09kidnap.html>
23 (offering comprehensive account of story of Khaled El-Masri, describing his
24 rendition and alleged involvement of CIA);
- 25
26 ix. Jane Mayer, *Outsourcing Torture*, THE NEW YORKER, (Feb. 14, 2005), *available*
27 *at* http://www.newyorker.com/printables/fact/050214fa_fact6 (providing
28

1 comprehensive accounting of rendition program from its initial inception
2 through early 2005);

- 3 x. Michael Hirsh, Mark Hosenball and John Barry, *Aboard Air CIA*, NEWSWEEK,
4 (Feb. 28, 2005), *available at* <http://www.newsweek.com/id/48864> (interviewing
5 rendition victims and describing rendition program including the use of specific
6 aircraft, including a Gulfstream V jet, registered, N379P);
7
8 xi. Douglas Jehl & David Johnston, *Rule Change Lets CIA Freely Send Suspects*
9 *Abroad to Jails*, N.Y. TIMES, Mar. 6, 2005, at 11, *available at*
10 <http://www.nytimes.com/2005/03/06/politics/06intel.html> (explaining that
11 current rendition program was authorized by President George W. Bush six days
12 after September 11, 2001);
13
14 xii. CIA Flying Suspects to Torture?, 60 MINUTES (CBS television broadcast) (Mar.
15 6, 2005), transcript *available at*
16 <http://www.cbsnews.com/stories/2005/03/04/60minutes/main678155.shtml>
17 (discussing rendition program, and describing U.S. modus operandi: “masked
18 men in an unmarked jet seize their target, cut off his clothes, put him in a
19 blindfold and jumpsuit, tranquilize him and fly him away.”);
20
21 xiii. Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2,
22 2005, at A1, *available at* <http://www.washingtonpost.com/wp->
23 [dyn/content/article/2005/11/01/AR2005110101644.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html) (describing
24 establishment of network of CIA-run “black site” detention facilities worldwide;
25 explaining that prisoners held within covert system were divided into two tiers:
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- (1) major terrorism suspects, held at black sites; and (2) prisoners with limited intelligence value, who are transferred to custody of foreign governments);
- xiv. Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, WASH. POST, Dec. 4, 2005, at A1, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/03/AR2005120301476.html> (describing in detail the decision-making process during Khaled El-Masri's rendition, including internal CIA discussions and role of German and Macedonian governments);
- xv. Brian Ross & Richard Esposito, *Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC NEWS (Dec. 5, 2005), *available at* <http://abcnews.go.com/WNT/Investigation/story?id=1375123>. (reporting on the scramble to shut down secret prisons in Poland and Romania and move CIA rendition and detention operations to North Africa in advance of Secretary of State Rice's visit to Europe);
- xvi. Craig Whitlock, *Courted as Spies, Held as Combatants*, WASH. POST, Apr. 2, 2006, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2006/04/01/AR2006040101465_pf.html (reporting on British and American role in rendition and detention of Plaintiff Bisher Al-Rawi);
- xvii. Tim Golden, *Guantánamo Terror Suspect Mocks Tribunal*, N.Y. TIMES, Apr. 7, 2006, at A18, *available at* <http://www.nytimes.com/2006/04/07/us/nationalspecial3/07gitmo.html> (discussing Binyam Mohamed's account of rendition and torture in Morocco and Afghanistan);

- xviii. Jerome Taylor, *CIA Sent Me To Be Tortured in Afghan Prison, Says Algerian*, INDEPENDENT (U.K.), July 8, 2006, at 32, *available at* <http://news.independent.co.uk/world/politics/article1166575.ece> (discussing Laid Saidi's account of rendition and torture, and noting that Ahmed Agiza and Muhammed al-Zery had described the use of "an almost identical procedure" in effecting their renditions);
- xix. Stephen Grey, *Our Dirty Little Torture Secret*, SUNDAY TIMES (UK), Oct. 22, 2006, *available at* <http://www.timesonline.co.uk/tol/news/article608386.ece> (discussing rendition of plaintiff Binyam Mohamed);
- xx. Stephen Grey, *Kidnapped to Order*, aired on Channel 4 News (London, U.K.), (June 11, 2007), summary *available at* <http://www.channel4.com/news/articles/dispatches/kidnapped+to+order/552067> (detailing harm caused by rendition program, and featuring interviews of witnesses and participants); and
- xxi. Frontline World, *Extraordinary Rendition*, aired on PBS (Nov. 7, 2007), *available at* <http://www.pbs.org/frontlineworld/stories/rendition701/> (featuring interviews with victims of the rendition program, including Plaintiff Bisher Al-Rawi; Egyptian General Ahmad Omar speaking on the cooperation between U.S. and Egyptian intelligence agencies; and Tyler Drumheller, the CIA's former Director in Europe.).
44. Much information about the role of private airline corporations in the rendition program, including the role of Defendant Jeppesen Dataplan Inc., has been uncovered in the course of criminal and journalistic investigations and other inquiries in Europe.

1 Information is now widely available identifying the role of particular corporations and
2 aircraft in the renditions of specific individuals, including Plaintiffs Mohamed, Britel,
3 Agiza, Bashmilah, and Al-Rawi.

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5 45. The Council of Europe in the course of its inquiry into the rendition program
6 compiled a database of aircraft involved in the program and their movements. Op. Cit.
7 Exh. S(a) at p.14. This database was based on publicly available information,
8 including flight plans and other records for the period between the end of 2001 to
9 2005, obtained from the inter-governmental agency responsible for air traffic control
10 in Europe, Eurocontrol, and other flight data from aviation authorities in the United
11 States and elsewhere. *Id.* From this information, the Council of Europe identified a
12 Gulfstream V Jet aircraft, registered with the U.S. Federal Aviation Administration
13 (FAA) as N379P, and a Boeing 737 Business Jet, registered with the FAA as N313P,
14 as two of the aircraft involved in the rendition program.
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16 46. Photographs of these two aircraft as well as their current FAA registration details are
17 publicly available. *See*
18 <http://www.airliners.net/search/photo.search?regsearch=N379P> (N379P), and
19 [http://www.airliners.net/search/photo.search?cnsearch=33010/1037&distinct_entry=tr](http://www.airliners.net/search/photo.search?cnsearch=33010/1037&distinct_entry=true)
20 [ue](http://www.airliners.net/search/photo.search?cnsearch=33010/1037&distinct_entry=true) (N4476S – formerly registered as N313P); *see also* Federal Aviation
21 Administration Registry for N379P, *available at*
22 <http://registry.faa.gov/aircraftinquiry/NNumSQL.asp?NNumbertxt=379P>; and Federal
23 Aviation Administration Registry for N4476S (formerly N313P), *available at*
24 [http://registry.faa.gov/aircraftinquiry/NNumSQL.asp?NNumbertxt=4476S&status=is](http://registry.faa.gov/aircraftinquiry/NNumSQL.asp?NNumbertxt=4476S&status=is+not+Assigned%2FReserved)
25 [+not+Assigned%2FReserved](http://registry.faa.gov/aircraftinquiry/NNumSQL.asp?NNumbertxt=4476S&status=is+not+Assigned%2FReserved).
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1 47. The role of these two aircraft and others in the rendition program has also been
2 documented by the European Parliament in the course of its inquiry into the operation
3 of the rendition program in Europe. Attached hereto as Exhibit EE is a true and
4 correct copy of the European Parliament, TDIP Temporary Committee (Rapporteur
5 Giovanni Fava), Working Document No. 8 on the Companies Linked to the CIA,
6 Aircraft Used by the CIA and the European Countries in which CIA Aircraft Have
7 Made Stopovers (Nov. 16, 2006), *available at*
8 http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380984_en.pdf
9
10 f.

11 48. After identifying these two aircraft through analysis of flight records, including flight
12 plans, and other flight data and witness testimonies, the Council of Europe and the
13 European Parliament linked these two aircraft to the rendition of plaintiffs. *See Op.*
14 *Cit. Exh. S(a); Op. Cit. Exh. T; see also* Declarations of Clive Stafford-Smith, Abou
15 Elkassim Britel, Anna Wigenmark, Mohamed Bashmilah, and Bisher Al-Rawi in
16 Support of Plaintiffs' Opposition to the United States' Motion to Dismiss or, in the
17 Alternative, for Summary Judgment, filed herewith.
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19 49. Numerous media reports and two books on the rendition program have also
20 documented the involvement of privately owned and operated aircraft, including
21 N379P and N313P, in the program both generally and specifically in the rendition of
22 plaintiffs. *See, e.g:*

- 23
24 i. *The Broken Promise, Part I*, Kalla Fakta (television broadcast on Sweden's TV
25 4) (May 17, 2004), English transcript *available at*
26 <http://www.hrw.org/english/docs/2004/05/17/sweden8620.htm> (discussing role
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1 played by aircraft with FAA registration number N379P and owned by
2 defendant Premier Executive Transportation in rendition of Plaintiff Agiza from
3 Sweden to Egypt in December, 2001);

- 4
- 5 ii. Dana Priest, *Jet Is an Open Secret in Terror War*, WASH. POST, Dec. 27, 2004,
6 at A1, *available at* [http://www.washingtonpost.com/wp-dyn/articles/A27826-](http://www.washingtonpost.com/wp-dyn/articles/A27826-2004Dec26.html)
7 [2004Dec26.html](http://www.washingtonpost.com/wp-dyn/articles/A27826-2004Dec26.html) (discussing generally use of CIA “front companies” in
8 rendition program);
- 9 iii. Scott Shane, Stephen Grey, and Margot Williams, *CIA Expanding Terror Battle*
10 *Under Guise of Charter Flights*, N. Y. TIMES, May 31, 2005, at A1, *available at*
11 <http://www.nytimes.com/2005/05/31/national/31planes.html> (discussing history
12 and current role of private charter air companies in the rendition program);
- 13 iv. A.C. Thompson and Trevor Paglen, *The CIA’s Torture Taxi*, S. F. BAY
14 GUARDIAN, Dec.14-20, 2005, Vol. 40, No. 11, *available at*
15 http://www.sfbg.com/40/11/cover_plane.html (describing institutional structure
16 of alleged CIA front airlines, including one company’s ownership of aircraft
17 registered N4476S, based upon examination of publicly available company
18 registration documents and annual returns); *see also* TREVOR PAGLEN & A.C.
19 THOMPSON, TORTURE TAXI: ON THE TRAIL OF THE CIA’S RENDITION FLIGHTS
20 (2006) (describing same in more extensive detail);
- 21
- 22 v. *Op. Cit.* ¶ 33(iv), Amnesty International, *Below the Radar: Secret Flights to*
23 *Torture and Disappearance* (Apr. 5, 2006) (describing rendition program and its
24 support network of aircraft and airports and documenting over 1000 flights
25 linked to renditions based on several sources including, *inter alia*, U.S. Federal
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Aviation Administration flight records; European flight records; actual flight logs; aircraft movements recorded by airport authorities; and airport records acquired in criminal and parliamentary investigations);

- vi. STEPHEN GREY, GHOST PLANE: THE TRUE STORY OF THE CIA TORTURE PROGRAM (2006) (by reference to flight logs, interviews with high level U.S. and European officials, and eye-witnesses testimony, tracing the history of the CIA rendition program from its roots to its current form and identifying the involvement of specific aircraft, including N379P and N313P in the rendition of specific individuals, including plaintiffs.).

50. The Council of Europe, through its detailed examination of flight plans obtained from Eurocontrol and other information, has also documented the role of Jeppesen in providing flight planning and logistical support to aircraft and flight crews used in the rendition program. In its 2007 report, the Council identified Jeppesen as “the aviation services provider customarily used by the CIA” and noted that Jeppesen filed “multiple ‘dummy’ flight plans for many of these flights.” Op. Cit. Exhibit S(b) at p.37.

51. The Council of Europe was able to identify Jeppesen as the entity responsible for filing specific flight plans because of a unique code, KSFOXLDI, assigned to Jeppesen in the Aeronautical Fixed Telecommunication Network (AFTN).¹ Every

The AFTN is the worldwide system of aeronautical fixed circuits provided, as part of the aeronautical fixed service, for the exchange of messages and/or digital data between aeronautical fixed stations having the same or compatible communications characteristics. AFTN comprises aviation entities including: ANS (Air Navigation Services) providers, aviation service providers, airport authorities and government agencies, to name a few. It exchanges vital information for aircraft operations such as distress messages, urgency messages, flight safety messages, meteorological messages, flight regularity messages, and aeronautical administrative messages.

1 flight plan submitted by Jeppesen to air traffic control authorities, including
2 Eurocontrol, notes this code as the “originator code,” i.e., the entity responsible for
3 filing the plan. Attached hereto as Exhibit FF is a true and correct copy of relevant
4 pages of Eurocontrol, Integrated Initial Flight Plan Processing System, IFPS Users
5 Manual, noting that: “The AFTN address KSFOXLDI is a collective address for
6 Jeppesen flight planning services in San Francisco.” A complete copy of the Manual
7 is available at
8 [http://www.cfm.eurocontrol.int/cfm/gallery/content/public/userdocs/docs/IFPS_Us](http://www.cfm.eurocontrol.int/cfm/gallery/content/public/userdocs/docs/IFPS_Users_Manual_12_0_external.pdf)
9 [ers_Manual_12_0_external.pdf](http://www.cfm.eurocontrol.int/cfm/gallery/content/public/userdocs/docs/IFPS_Users_Manual_12_0_external.pdf).
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11 52. By way of background, the owners or operators of every civilian aircraft traveling
12 through European airspace must notify Eurocontrol of its intended flight path.
13 Notification is provided in the form of a flight plan mapping out the aircraft’s
14 itinerary. In the aviation industry, it is common practice for owners and operators of
15 aircraft to contract out the logistics of getting an aircraft from point A to point B,
16 including submission of flight plans, to a corporation, such as Jeppesen, specializing
17 in provision of such services. Once completed, and in advance of departure, flight
18 plans are submitted to Eurocontrol. Flight plans detail dates of travel, start point and
19 end destinations, as well as the locations of any intended lay over destinations. They
20 are required to note the entity responsible for filing the plan and must do so using the
21 filer’s AFTN address as the filer, or “originator.” *Id.* (specifying requirements for
22 submission of flight plans).
23

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25 53. The role of Jeppesen in providing flight and logistical support services to aircraft and
26 air crew used in the rendition program has been widely reported. *See, e.g.:*
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- i. Jane Mayer, *Outsourcing: The C.I.A.'s Travel Agent*, THE NEW YORKER, (Oct. 30, 2006) *available at* http://www.newyorker.com/archive/2006/10/30/061030ta_talk_mayer (describing role of Jeppesen in planning the CIA's extraordinary rendition flights, and quoting former Jeppesen employee's recounting of a corporate meeting at which Jeppesen's managing director, as well as another executive, told the employee that Jeppesen handled the rendition flights);
- ii. Claudio Gatti, *Boeing Unit to Face Suit in CIA Seizures*, INT'L HERALD TRIBUNE May 29, 2007, at 3, *available at* <http://www.ihf.com/articles/2007/05/29/news/rendition.php> (noting that an independent investigation by the Italian newspaper *Il Sole 24 Ore* "independently found evidence that two of the three plaintiffs in the ACLU lawsuit . . . were transported . . . with the logistical support from Jeppesen");
- iii. Bob Egelko, *Firm Reportedly Filed Bogus CIA Flight Plans*, S. F. CHRONICLE June 13, 2007, *available at* <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/06/13/BAGQGQECQC1.DTL&hw=Firm+Reportedly+Filed+Bogus+CIA+Flight+Plans&sn=001&sc=1000> (discussing Council of Europe report and Jeppesen's role in the rendition program).

54. Telexes obtained in the course of a criminal investigation in Spain further substantiate Jeppesen's involvement in the rendition program. These telexes, obtained in the course of an investigation into the alleged use of Mallorca airport as a "staging post" for CIA rendition flights, documents the registration numbers of aircraft that this investigation, as well as the aforementioned European inquiries, have identified as

1 involved in the rendition program, including N313P, N4476S, and N8068V. The
2 telexes also identify Jeppesen, through its local agent, as the entity responsible for
3 organizing the logistical support for these aircraft and their crew, and are available at
4 <http://www.ghostplane.net/elmasri>. *See also* Armen Keteylan & Phil Hirschhorn,
5 *Muslim Says He Was Abducted by U.S.*, CBS NEWS (Nov. 28, 2006), *available at*
6 [http://www.cbsnews.com/stories/2006/11/28/cbsnews_investigates/printable2213638.](http://www.cbsnews.com/stories/2006/11/28/cbsnews_investigates/printable2213638.shtml)
7 [http://www.cbsnews.com/stories/2006/11/28/cbsnews_investigates/printable2213638.](http://www.cbsnews.com/stories/2006/11/28/cbsnews_investigates/printable2213638.shtml)
8 shtml (discussing Spanish documents unearthed by journalist Stephen Grey that link
9 Jeppesen to rendition flights).

- 10 55. Flight records and other documentary evidence also substantiate Jeppesen's
11 involvement in the rendition of plaintiffs. For example, the involvement of Jeppesen
12 in providing flight planning and other logistical assistance to the aircraft used in Mr.
13 Agiza's rendition is confirmed by documents uncovered in the course of
14 investigations into his rendition.
- 15 56. An invoice numbered 19122416 from Luftfartsverket Division Stockholm to Jeppesen
16 Dataplan and a related record from the Swedish Civil Aviation Administration
17 ("SCAA") notes that on December 18, 2001 Jeppesen paid for the following fees for a
18 Gulfstream V aircraft, registration number N379P: Noise, Landing, Terminal
19 Navigation, Emission, Passenger and Security. The SCAA record further notes that
20 the aircraft landed at Bromma airport, Sweden at 19:54 on December 18, 2001 and
21 departed for Cairo the same day at 20:49. This record also notes that a total of nine
22 passengers were on board the aircraft. Attached hereto as Exhibit GG is a true and
23 correct copy of invoice number 19122416 together with related SCAA record.
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1 57. The originator code on the “local data string” for the related flight plan, further
2 evidences Jeppesen’s involvement in arranging the logistics for this flight. The
3 “originator code,” i.e., the entity responsible for filing the flight plan, is identified by
4 the code number KSFOXLDI. As noted above, in the aviation industry, this code is
5 unique to Jeppesen Dataplan, Inc. Attached hereto as Exhibit HH is a true and correct
6 copy of the local data string relevant to Mr. Agiza’s rendition flight.
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8 58. The same Jeppesen-specific originator code, KSFOXLDI, is also present on “local
9 data strings” relative to flight plans filed for aircraft used in the renditions of plaintiffs
10 Britel, Bashmilah, and Al-Rawi. *See* Declarations of Abou Elkassim Britel, Mohamed
11 Farag Ahmad Bashmilah, and Bisher Al-Rawi, filed herewith.
12

13 * * * *

14 I hereby declare under penalty of perjury that the foregoing is true and correct.
15

16 Executed this 14th day of December, 2007.

17 /s/ Steven Macpherson Watt

18 Steven Macpherson Watt
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